

IT 05-7

Tax Type: Income Tax

**Issue: Federal Change (Individual)
Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Case No. 04 IT 0000
)	
)	SSN 000-00-0000
v.)	
)	Tax Year 2001
)	
JANE DOE)	
Taxpayer)	
)	Administrative Law Judge
)	Kenneth J. Galvin

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Ralph Bassett, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois; Ms. Jane Doe, appearing *pro se*.

Synopsis:

On September 28, 2004, the Illinois Department of Revenue (hereinafter “the Department”) issued a Notice of Deficiency (hereinafter “NOD”) to Jane Doe (hereinafter “taxpayer”). The basis of the NOD was the Department’s determination that the taxpayer had failed to file an Illinois income tax return for tax year 2001. The NOD proposed the assessment of taxes, penalties and interest.

On November 27, 2004, taxpayer filed a timely protest of the NOD and requested a hearing, which was held on June 27, 2005. Following a review of the testimony

presented at the hearing, it is recommended that the Department's NOD be finalized after adjustments as detailed on the EDA-24 dated April 22, 2005.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD dated September 28, 2004, which indicates that the taxpayer failed to file an Illinois income tax return for tax year 2001. After the NOD was sent to the taxpayer, taxpayer submitted to the Department copies of her US-1040, US-1040X and CA Form 540NR and W-2's. The NOD was adjusted based on the documents submitted by the taxpayer. The adjustments are detailed on the EDA-24 dated April 22, 2005. After adjustments, taxpayer has a tax liability of zero, and a non-filing penalty of \$250. Dept. Ex. No. 1.
2. On November 26, 2004, taxpayer protested the NOD. Taxpayer's Ex. No. 2.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, requires that a tax return be filed by the fifteenth day of April following the close of the taxable year. 35 ILCS 5/505(2). Section 601 provides that every taxpayer required to file a return shall pay any tax due to the Department on or before the date fixed for filing such return. 35 ILCS 5/601(a). If a taxpayer fails to file a tax return, the Department shall determine the amount of the tax due and this amount shall be "*prima facie* evidence of the correctness of the amount due." 35 ILCS 5/904(b). Additionally, Section 904(a) of the Illinois Income Tax Act provides that a NOD is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a).

The NOD issued in this case indicates that taxpayer failed to file a tax return for 2001. The Department adjusted the taxpayer's tax liability on the NOD based on documents the taxpayer sent in. After adjustments, taxpayer has an unpaid penalty of \$250, assessed under 35 ILCS 735/3-3, for failure to file a tax return for tax year 2001. This penalty is the only remaining issue in this case.

The Department's *prima facie* case is established by the introduction into evidence of copies of its records under the certificate of the Director. 35 ILCS 5/914. In this case, the Department's *prima facie* case was established when it introduced the Notice of Deficiency under the Certificate of the Director. To overcome the Department's *prima facie* case, the taxpayer must present consistent and probable evidence identified with its book and records. A taxpayer's testimony alone will not overcome the Department's *prima facie* case. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). At the hearing on June 27, 2005, taxpayer did not produce any documentary evidence to prove that she filed an Illinois income tax return for 2001. Additionally, taxpayer did not present any evidence showing reasonable cause for the abatement of the penalty for failure to file a tax return.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Deficiency should be finalized after adjustments as detailed on the EDA-24 dated April 22, 2005.

Kenneth J. Galvin
Administrative Law Judge

August 29, 2005